

## **REMARKS**

### **A. BACKGROUND**

The present Amendment is in response to the Office Action mailed July 1, 2009. Claims 12-22 were pending and rejected in view of cited art.<sup>1</sup> Claims 12 and 16 are amended, and new claim 23 is added. Claims 12-23 are now pending in view of the above amendments.<sup>2</sup>

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, are consistent with the Examiner's understanding.

### **B. REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH**

Paragraphs 2 and 3 of the Office Action rejected claims 12-22 under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, claims 12 and 16 have each been amended to recite, in part, "the expandable means being expandable from a delivery diameter to a deployment diameter, a sheath being slidably mounted over the expandable means and being arranged for proximal retraction from over the expandable means by means of a retraction device." Claims 12 and 16 as amended thus describe a deployment device without explicitly reciting an expandable stent. New independent claim 23 has been added in which the combination of a delivery apparatus and an expandable stent is claimed. Applicant respectfully submits that the claims are supported by the specification and/or drawings as originally filed and respectfully requests the withdrawal of the rejection under 35 U.S.C. §112.

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

**C. PRIOR ART REJECTION UNDER 35 U.S.C. §102(B)**

Paragraph 4 of the Office Action rejected claims 12-15 and 22 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,445,646 (*Euteneuer*). Applicant respectfully disagrees.

*Euteneuer* teaches a single layer hydraulic sheath stent delivery apparatus and method (Title). With respect to independent claim 12, the Office Action at page 3 asserts that *Euteneuer* teaches "a catheter (12) having a proximal end and a distal end; an expandable means (110) mounted at the distal end of the catheter and being expandable by means of a fluid pressure device." Accordingly, the Office Action identified the catheter 12 as the catheter of claim 12 and the placement balloon 110 as the expandable member of claim 12. *Euteneuer* at col. 9, ll. 48-51, further teaches, "*Once the stent is deployed using any of the embodiments, a placement balloon 110 (best seen in FIG. 9) can be inflated to seat the stent into the vessel wall, as is well known in the art.*" (Emphasis added).

In direct contrast, claim 12 recites, in part, "[A] sheath being slidably mounted on a stent and being arranged for proximal retraction to expose a stent by means of a retraction device, wherein the fluid pressure device is further arranged for operating the retraction device so that *the expandable means is expanded in response to the retraction of the sheath.*" Since *Euteneuer* fails to teach each and every element of claim 12, Applicant respectfully requests the rejection of independent claim 12 under 35 U.S.C. § 102(b) be reconsidered and withdrawn. As claims 13-15 and 22 depend from claim 12, these claims are allowable for at least the same reasons as claim 12.

**D. ALLOWABLE SUBJECT MATTER**

Page 4 of the Office Action indicated that claims 16-21 would be allowable if rewritten in order to overcome the rejections under 35 U.S.C. §112 second paragraph as set forth above. In response, claims 12 and 16 have been amended to overcome the §112 and Applicant submits that claims 16-21 are now in condition for allowance. Claim 23 includes elements similar to those of claim 16 and further specifically claims an expandable stent. Accordingly, claim 23 should be allowable for at least the same reasons claim 16 is allowable over the prior art of record.

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<sup>2</sup> Support for the claim amendments and/or new claim(s) can be found throughout the specification and/or drawings as originally filed.

In summary, claims 16-23 are now pending in view of the above amendments, and all are patentably distinct from the prior art. Allowance of each of these claims is respectfully requested.

**E. CONCLUSION**

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 1st day of October, 2009.

Respectfully submitted,

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